INDEX

	Page
Opinions below	1
Jurisdiction	1
Question presented	2
Statute involved	2
Statement	3
Summary of argument	9
Argument:	
The judgment of the Court of Appeals should be reversed and the cause remanded to the District Court for further proceedings	10
Conclusion	16
Appendix	17

CITATIONS

Cases:

Bates v. *United States*, 323 U. S. 15	10,16
Mensevich v. *Tod*, 264 U. S. 134	9,11
Price v. *Johnston*, 334 U. S. 266	9, 13, 14, 16
Salinger v. *Loisel*, 265 U. S. 224	9,12
Wong Doo v. *United States*, 265 U. S. 239	12

Statutes:

Immigration Act of February 5, 1917, c. 29, 39 Stat. 874, 889-890:	
Sec. 19	2,3
Sec. 20	3
8 U.S.C. (1946 ed.):	
Sec. 155(a)	2
Sec. 156	2
28 U.S.C. 2244, as revised by Public No. 773, c. 646, sec. 1, 80th Cong., 2d sess.	12

Miscellaneous:

18 Am. J. Int. L., Supp., pp. 84-90	17,19
Encyclopaedia Britannica:	
"Lausanne, Conference of"	17
"Trianon, Treaty of"	17

POOR COPY

BLEED THROUGH

In the Supreme Court of the United States

OCTOBER TERM, 1948

No. 10

ALEXANDESUS BELLASKUS,* PETITIONER

v.

L. D. CROSSMAN, OFFICER IN CHARGE, UNITED STATES IMMIGRATION AND NATURALIZATION SERVICE

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE RESPONDENT

OPINIONS BELOW

The majority and dissenting opinions in the Court of Appeals (R. 26-31) are reported at 164 F. 2d 412.

JURISDICTION

The judgment of the Court of Appeals was entered December 2, 1947 (R. 32). The petition

---

* Petitioner's correct name is Alexandrus Bellasakus, the name by which he was know in the proceedings in the District Court (R. 3, 4, 6, 24) and in all prior proceedings (R. 8, 9, 10). The erroneous appellation "Alexandesus Bellaskus" first appeared in petitioner's notice of appeal from the judgment of the District Court (R. 25), and the error has survived in subsequent proceedings (R. i, 1, 11, 26, 32, 33).

for a writ of certiorari was filed January 16, 1948, and was granted March 15, 1948 (R. 33). The jurisdiction of this Court rests upon Section 240(a) of the Judicial Code, as amended (now 28 U.S.C. 1254(1)).

QUESTION PRESENTED

Petitioner is an alien who has been ordered deported to Greece. In 1939 a full hearing was held on a writ of habeas corpus in which the legality of the order was challenged on certain grounds, and the writ was dismissed. In his present habeas corpus petition, he tendered an issue which had not been determined in the prior proceeding, *viz.*, whether the immigration officials had authority to order him deported to a country of which, allegedly, he was not a citizen and in which he had never been. The question presented is whether the District Court erred in refusing to consider this issue on the ground that its consideration was foreclosed by the previous habeas corpus proceeding and petitioner's failure to raise it therein.

STATUTE INVOLVED

The Immigration Act of February 5, 1917, c. 29, 39 Stat. 874, 889-890, provided in pertinent part as of the time of the issuance of the warrant of deportation involved herein (October 25, 1935):[1]

> Sec. 19. * * * any alien who manages or is employed by, in, or in connection with any

[1] The only subsequent change in the relevant provisions has been the substitution of the Attorney General for the Secretary of Labor. See 8 U.S.C. (1946 ed.), 155(a), 156.

POOR COPY

BLEED THROUGH

house of prostitution or music or dance hall or other place of amusement or resort habitually frequented by prostitutes, or where prostitutes gather, * * * shall, upon the warrant of the Secretary of Labor, be taken into custody and deported * * *. In every case where any person is ordered deported from the United States under the provisions of this Act, * * * the decision of the Secretary of Labor shall be final.

Sec. 20. The deportation of aliens provided for in this Act shall, at the option of the Secretary of Labor, be to the country whence they came or to the foreign port at which such aliens embarked for the United States; * * * or if such aliens are held by the country from which they entered the United States not to be subjects or citizens of such country, and such country refuses to permit their reentry, or imposes any condition upon permitting reentry, then to the country of which such aliens are subjects or citizens, or to the country in which they resided prior to entering the country from which they entered the United States. * * *

STATEMENT

On October 25, 1935, after a hearing before an immigrant inspector, a warrant was issued by the Assistant to the Secretary of Labor ordering that petitioner be deported to Greece pursuant to Section 19 of the Immigration Act of February 5, 1917, *supra*, upon a finding that he was an alien who had been found "managing a music and dance hall * * * habitually frequented by prostitutes and where prostitutes gather" (R. 8).

On November 29, 1939,[2] petitioner filed in the District Court for the Southern District of Texas a petition for a writ of habeas corpus in which he alleged that there was no evidence that he owned any interest in the dance hall, that he was not given a fair hearing by the immigration authorities, and that the evidence was insufficient to support the deportation warrant. The writ issued and a hearing was held at which the record of the hearing before the immigrant inspector was introduced in evidence. The court (Kennerly, D.J.), after "a careful examination of the record," found the allegations of the petition to be without substance. The writ was accordingly dismissed on December 5, 1939, and petitioner was remanded to the custody of the immigration authorities for deportation in accordance with the warrant. (R. 9-11.)

On May 20, 1946,[3] petitioner filed in the same District Court another petition for a writ of habeas

---

[2] From 1936 to 1939, the Immigration and Naturalization Service, as appears from the files of that office, was endeavoring through the Department of State to obtain a passport for petitioner from the Greek Government. In April 1939 the Greek Government, after proof of petitioner's citizenship had been furnished to it, issued instructions to its Legation in Washington to issue a passport to petitioner, and in August 1939 the Greek Legation instructed the Greek Consul in New Orleans to issue the passport. Petitioner was at liberty under bond during the intervening period. See Appendix, *infra*, pp. 18-19. We refer to these files herein, though they are not part of the record, in order to explain the delays in effecting petitioner's deportation.

[3] The files of the Immigration and Naturalization Service reveal that on December 21, 1939, after the dismissal of the first habeas corpus petition, petitioner was granted an extension of six months to dispose of his property. At the conclusion of that period, the Greek Consul at New Orleans was still

POOR COPY

BLEED THROUGH

corpus (R. 4-5), which gave rise to the present proceeding. He alleged that the immigration authorities had taken him into custody and were about to remove him to New York for deportation to Greece. He repeated the allegations of the previous petition that he had not been accorded a fair hearing by the immigration authorities and that the evidence was insufficient to support the deportation warrant. He also made the following new allegations: (1) that the issuance of the warrant was "arbitrary and capricious," an "abuse of discretion," and the result of an "erroneous construction of Law";[4] (2) that the warrant, having been issued in 1935, had "expired by operation of law"; and (3) that, since the immigrant inspector had made findings that petitioner was born in Turkey, immigrated from Turkey, and was a citizen of Turkey, and since, allegedly, he was not a citizen

---

unwilling to issue a passport. Since the Mediterranean was closed because of the war, the matter rested there until June 1945, when petitioner was ordered to surrender himself for deportation. He obtained two further stays of deportation in which to file a motion to reopen the case, which motion was finally denied on March 29, 1946. When finally taken into custody for deportation, he filed the habeas corpus petition involved in the present proceeding. See Appendix, *infra*, pp 20-21. The files also disclose that the Greek Ministry of Foreign Affairs has recently again instructed the Greek Embassy in Washington to issue a Greek passport to petitioner. See Appendix, *infra*, p. 22.

[4] The petition did not specify in what respect the immigration authorities had, allegedly, misconstrued the law in ordering petitioner deported. Nor was the nature of the alleged misconstruction developed at the hearing on the order to show cause why the writ should not issue, due to the ruling of the district judge that petitioner's failure to present this contention in the previous habeas corpus proceeding foreclosed his making it in the instant proceeding (R. 16).

of Greece and had never been in Greece, he could not legally be deported to Greece. No explanation was given as to why the new grounds had not been raised in the earlier habeas corpus proceeding, nor, in fact, was the earlier proceeding otherwise called to the court's attention.

On the same day, the District Court (Hannay, D.J.) issued an order "to show cause * * * why the Writ of Habeas Corpus should not issue," and a hearing was set for the following day. The order directed respondent to produce petitioner at the hearing, and also the record of the proceedings before the Immigration and Naturalization Service in petitioner's case. (R. 6.)

At the hearing on the following day, May 21, 1946, respondent produced petitioner (R. 12-13) and filed a motion to dismiss the petition on the ground that it alleged no facts justifying issuance of the writ, but merely conclusions of law (R. 6). Respondent also, "without waiving the foregoing motion to dismiss," filed a return to the show-cause order, stating that the deportation warrant "was issued following a full and fair hearing, held in accordance with law * * * before an authorized Immigrant Inspector, and at which hearing petitioner was represented by counsel * * * and was offered the opportunity to cross-examine any and all of the witnesses produced at said hearing; that at the conclusion of such hearing said officer found that petitioner is subject to deportation * * *" (R. 7). The return also called the court's attention to the 1939 habeas corpus proceeding be-

POOR COPY

BLEED THROUGH

fore Judge Kennerly (R. 7). Copies of the deportation warrant (R. 8) and the order and memorandum opinion of Judge Kennerly in the earlier proceeding (R. 9-11) were attached to the return as exhibits.

Counsel for respondent stated at the hearing that he did not have the record of the proceedings before the Immigration and Naturalization Service, the production of which had been directed by the show-cause order,[5] but that he thought the court could proceed without it in view of the fact that Judge Kennerly had already reviewed the record and the matter was *res judicata* (R. 12). Judge Hannay stated that if he had known that Judge Kennerly had already reviewed the deportation record, he would not have ordered it produced, and he refused petitioner's further motion to require its production (R. 16-17).

Judge Hannay refused to consider two of the new issues tendered, *i.e.*, whether the immigration authorities had erroneously construed the law in ordering petitioner's deportation (R. 16, 20), and whether his deportation to Greece, rather than to Turkey, was illegal (R. 15-16, 20, 21-22). So far as these matters were concerned, the court held that even though they had not been raised in the previous habeas corpus proceeding, they "should have been raised" and that consideration of

---

[5] This record was kept in the Central Office of the Immigration and Naturalization Service in Philadelphia (see R. 17-18) and obviously, as observed by the court below (R. 28), could not have been produced in the habeas corpus court in Houston, Texas, on one day's notice.

them in the second proceeding was foreclosed by Judge Kennerly's action (R. 15, 16, 17-18). Petitioner's attorneys made no attempt to show why these matters had not been raised in the prior proceeding. The court, after hearing argument as to whether the deportation warrant had expired by lapse of time (R. 18-23), discharged the rule to show cause, dismissed the petition for the writ,[6] and remanded petitioner to custody for deportation (R. 24).

On appeal to the Court of Appeals for the Fifth Circuit, petitioner abandoned his contention that the warrant had expired by lapse of time (R. 29), but contended that the District Court erred in not giving him a hearing on the other two new allegations of his petition. In affirming the order of the District Court, the majority of the Court of Appeals said that the District Court had properly refused to consider the first of those grounds because petitioner had presented neither proof nor offer of proof "as to how or in what manner the abuse of discretion asserted came into being, nor what acts of the officials were arbitrary and capricious, nor how there was applied an erroneous construction of law" (R. 29). In respect of the other asserted ground—which the majority opinion referred to as an alleged lack of "authority to deport to Greece because of the finding of birth

[6] The court's order referred to the "writ" as being dismissed (R. 24), but this was evidently an inadvertence (cf. the title of the order, R. 24), since, strictly speaking, no writ had issued, though the order to show cause had, somewhat unusually, directed petitioner's production at the hearing (R. 6).

POOR COPY

BLEED THROUGH

in Turkey"—the majority said that under Section 20 of the Immigration Act (*supra*, p. 3), "Congress recognized several factors in determining the place of destination of an alien on deportation. Birth is merely one of these factors" (R. 29-30).

In a dissenting opinion, Judge Sibley pointed out that the optional destinations to which, under Section 20, an alien may be ordered deported are limited, and that "It is not lawful to deport an alien to a country of which he is not now a citizen or subject and in which he has never resided and from which he did not depart to the United States" (R. 30). Consequently, he said, the District Court "should have enquired whether there was any lawful reason for sending Bellaskus to Greece where he was not born, is not a citizen or subject, and has never been" (R. 31).

SUMMARY OF ARGUMENT

The second habeas corpus petition, in challenging the authority to deport to Greece, rather than to Turkey, presented an issue cognizable on habeas corpus. *Mensevich* v. *Tod*, 264 U. S. 134. The District Court erred in refusing to consider this issue on the ground of *res judicata*, since that principle has no application in habeas corpus. *Salinger* v. *Loisel*, 265 U. S. 224. Nor could it properly have given "controlling weight" to the prior refusal to discharge on habeas corpus *id.*, at 230-231), since this issue had not previously been raised. And since the respondent did not specifically make the contention below that petitioner was abusing the writ by raising that issue in the present proceeding

without a showing as to why he had not raised it in his first petition for the writ, the court could not properly have refused to consider the issue on that ground. *Price* v. *Johnston*, 334 U. S. 266.

The files of the Immigration and Naturalization Service show that the reason for ordering petitioner's deportation to Greece, though admittedly he was born in Turkey and was originally a citizen of that country, was because the place of his birth had been ceded to Greece after World War I and, under the terms of a treaty between Greece and Turkey, he had acquired Greek nationality. But since those files were not produced in evidence and were not considered by the courts below, we believe that orderly judicial procedure requires these facts to be developed at a new hearing in the District Court (cf. *Bates* v. *United States*, 323 U.S. 15, 17), provided that petitioner can establish his right to raise the issue after having failed to do so in the first habeas corpus proceeding in 1939.

ARGUMENT

The Judgment of the Court of Appeals Should be Reversed and the Cause Remanded to the District Court for Further Proceedings.

In respect of the allegation of the second habeas corpus petition whereby petitioner challenged the authority of the immigration officials to deport him to Greece rather than to Turkey, the majority of the Court of Appeals, as we have indicated *supra*, p. 9), seem to have assumed that petitioner's contention was merely that he could not be deported to Greece because he was not

POOR COPY

BLEED THROUGH

born in that country. If this had been all there was to the allegation, we would, of course, agree with the majority below that no hearing was required on that issue, since the place of birth is not made a factor in determining a deported alien's destination under Section 20 of the Immigration Act.[7] But petitioner had alleged that the immigrant inspector had made findings that he was born in Turkey, immigrated from Turkey, and was a citizen of Turkey, and had further alleged that he was not a citizen of Greece and had never been in Greece (*supra*, pp. 5-6). If these allegations were true, there was no authority to deport petitioner to Greece, and the issue could properly be raised by habeas corpus. *Mensevich* v. *Tod*, 264 U. S. 134. For under Section 20, as pointed out by the dissenting judge (R. 30), the optional destinations of a deported alien are three: (1) the country or port of departure to the United States; (2) the country of which the alien is a citizen or subject; or (3) the country of last residence before entering the country of departure (the latter two optional destinations being permissible only where the first is ruled out for the reasons stated in the section, *viz.*, a holding by the country of departure that the alien is not a citizen or subject of that country and its refusal to permit reentry or the imposition of

[7] For this reason, the majority below, in stating that the place of birth is "one of [the] factors" in determining the deported alien's destination (R. 30), were also mistaken, except, of course, in so far as the place of birth might determine the country of citizenship.

any condition upon permitting reentry). Greece could have been none of such countries if petitioner's allegations were true. Consequently, it would have been error for the District Court to have refused consideration of this ground if the habeas corpus proceeding below had been the first instituted by petitioner.

It remains then to be considered whether the District Court was correct in refusing to hear petitioner on this point on the ground that his case had already been reviewed by Judge Kennerly. We think it is clear from the transcript of the hearing that the District Court thought that the decision of Judge Kennerly was *res judicata* on this issue (see pp. 7-8, *supra*). In this the court was, of course, mistaken, since it is well settled that the principle of *res judicata* does not strictly apply in habeas corpus proceedings. *Salinger* v. *Loisel,* 265 U. S. 224, 230. It is true that while *res judicata* has no strict application in habeas corpus proceedings, "controlling weight" may be given in a second habeas corpus proceeding to "a prior refusal to discharge on a like application." *Salinger* v. *Loisel, supra,* at 230-231; *Wong Doo* v. *United States,* 265 U. S. 239. And §2244 of Title 28 of the United States Code, as recently revised by Congress (Public No. 773, approved June 25, 1948, c. 646, sec. 1, 80th Cong., 2d sess.), enacts this rule into statutory form.[8] But even this rule could not properly have

[8] §2244 provides: "No circuit or district judge shall be required to entertain an application for a writ of habeas corpus to inquire into the detention of a person pursuant to a judgment

POOR COPY

BLEED THROUGH

been invoked by the District Court, since the issue of the legality of petitioner's deportation to Greece had not previously been raised. *Price v. Johnston*, 334 U. S. 266, 289.[9]

In our brief in opposition to the granting of certiorari in the instant case, we conceded that the district judge erred in basing his decision on the principle of *res judicata*, but argued that, notwithstanding the erroneous ground on which the decision was predicated, the decision itself was correct. We urged that "where successive applications for writs of habeas corpus are filed, the applicant must establish his good faith by explaining to the court why new matters urged were not presented in the original application," and pointed out that petitioner "did not attempt, either in his [second] habeas corpus petition or at the hearing, to explain

---

of a court of the United States, or of any State, if it appears that the legality of such detention has been determined by a judge or court of the United States on a prior application for a writ of habeas corpus and the petition presents no new ground not theretofore presented and determined, and the judge or court is satisfied that the ends of justice will not be served by such inquiry."

[9] "There has thus been no proper occasion prior to the fourth proceeding for a hearing and determination by the District Court as to the allegation that the prosecution knowingly used false testimony to obtain a conviction. That fact renders inapplicable *Salinger* v. *Loisel*, 265 U. S. 224, upon which reliance was placed by the Circuit Court of Appeals. It was there held that, while *habeas corpus* proceedings are free from the *res judicata* principle, a prior refusal to discharge the prisoner is not without bearing or weight when a later *habeas corpus* application raising the same issues is considered. But here the three prior applications did not raise the issue now under consideration and the three prior refusals to discharge petitioner can have no bearing or weight on the disposition to be made of the new matter raised in the fourth petition."

why the point of the legality of his deportation to Greece, rather than to Turkey, had not been raised in his 1939 proceeding" (pp. 10-11). In making this argument, we adopted by reference the similar argument advanced in our brief in *Price* v. *Johnston*, No. 111, last Term, which was then pending before the Court. Since then, however, the *Price* case has been decided, 334 U. S. 266, and the opinion of the Court outlined the appropriate procedure whereby a charge that the writ of habeas corpus is being abused should be made and the issue determined. The Court said that the burden rests on the respondent in the first instance to make the claim of an abuse of the writ with clarity and particularity in the return to the order to show cause. Once the claim is made, the burden of answering the allegation and of proving that he has not abused the writ rests on the petitioner. If the answer is inadequate, the court may dismiss the petition without further proceedings. But if there is a substantial conflict, a hearing may be necessary to determine the actual facts, and appropriate findings and conclusions of law can then be made. (334 U. S., at 291-292.)[10]

Since no specific claim of an abuse of the writ was made by respondent below and no such proce-

[10] The fact that the petitioner in a habeas corpus proceeding is often a prisoner unlearned in the law and unrepresented by counsel seems to have had some influence on the Court's ruling that he does not have the burden in the first instance of negating abuse of the writ in a successive application and substantiating the denial (334 U. S. 266, 291-292), but we do not understand that the procedure outlined was intended to be limited to such situations.

POOR COPY

BLEED THROUGH

dure as that outlined above was followed, we withdraw our reliance on petitioner's failure to explain to the District Court why his contention in respect of the legality of his deportation to Greece had not been made in the previous proceeding, and concede that the District Court erred in refusing to consider this ground.

We pointed out in our brief in opposition to the granting of certiorari in this case (pp. 12-13) that according to the central office file of the Immigration and Naturalization Service, which was introduced in evidence at petitioner's 1939 habeas corpus proceeding, the inspector who held the hearing made findings that petitioner, although a Greek by race, was a citizen of Turkey, and recommended deportation to Turkey; that when an attempt was made to obtain a Turkish passport, it was discovered that petitioner had been born in a portion of Turkey which was ceded to Greece after World War I, and under the provisions of a treaty between Greece and Turkey he had become a citizen of Greece; and that the finding was in consequence revised to show that petitioner was a citizen of Greece, to which country he was then ordered deported. See Appendix, *infra,* pp. 17-18. Accordingly, we stated, if petitioner's deportation record had been produced in response to the District Court's order to show cause in the instant habeas corpus proceeding, it would have become apparent that petitioner's allegations of fact were without substance in this respect. But since the deporta-

tion record was not in fact produced and is not a part of the official record in this case, we think that orderly judicial procedure requires that the above-mentioned facts should be developed at a new hearing before the District Court (cf. *Bates* v. *United States,* 323 U.S. 15, 17), assuming, of course, that petitioner can establish his right to raise this issue after having failed to raise it in the 1939 proceeding.

CONCLUSION

For the foregoing reasons, respondent suggests that the judgment of the Court of Appeals should be reversed and the cause remanded to the District Court with directions to vacate its order discharging the rule to show cause and dismissing the petition for a writ of habeas corpus. It is further suggested that, pursuant to the procedure set forth in *Price* v. *Johnston,* 334 U. S. 266, 293-294, respondent should be free to request the court to require petitioner to show cause why the new matter presented in the second habeas corpus petition was not raised in the first proceeding.

Respectfully submitted.

PHILIP B. PERLMAN,
Solicitor General.

ALEXANDER M. CAMPBELL,
Assistant Attorney General.

ROBERT S. ERDAHL,
PHILIP R. MONAHAN,
Attorneys.

OCTOBER 1948.

POOR COPY

BLEED THROUGH

APPENDIX

The following chronological summary of the history of petitioner's deportation proceeding, taken from the central office file of the Immigration and Naturalization Service, is presented in order to explain the delays in effecting his deportation:

June 28, 1935: Warrant of arrest issued.

July 25, 26, 31, 1935: Hearing before immigrant inspector.

July 31, 1935: Immigrant inspector recommends deportation to Turkey, "the country whence [petitioner] came and of which he is a citizen."

August 23, 1935: Recommendation approved by Galveston District Director, Immigration and Naturalization Service.

September 19, 1935: Turkish Consul in New York refuses to issue passport because "this man is subject to the exchange of population provided for in the Treaty of Trianon" [11] and "must be considered a citizen of Greece."

September 23, 1935: Galveston District Director revises recommendation so as to make Greece the country of destination.

---

[11] The Turkish Consul was in error in referring to the Treaty of Trianon. That treaty, signed on June 4, 1920, was between the Allied and Associated Powers and Hungary. *Encyclopaedia Britannica*, "Trianon, Treaty of." As subsequent developments in petitioner's deportation proceeding made clear (see *infra*, p. 19), the diplomatic instrument to which the Turkish Consul had reference was the Convention Concerning the Exchange of Greek and Turkish Populations, signed at Lausanne on January 30, 1923, and constituting one of 17 diplomatic instruments signed at the Conference of Lausanne (November 20, 1922, to July 24, 1923) between Turkey and the Governments of Great Britain, France, Italy, Japan, Greece, Bulgaria, and Yugoslavia. *Id.*, "Lausanne, Conference of"; 18 Am. J. Int. L., Supp., pp. 84-90.

October 10, 1935: Chairman of the Board of Review recommends deportation to Greece; recommendation concurred in by Deputy Commissioner.

October 25, 1935: Warrant of deportation to Greece issued.

December 2, 1935: Request to reopen deportation proceeding filed.

December 11, 1935: Request denied.

April 8, 1936: Secretary of State requested to negotiate with Greek Government, through American Legation in Athens, "with a view to having the Greek Legation in Washington instructed to issue the desired passport facilities" to petitioner.

April 1936-April 1937: Correspondence between State and Labor Departments, and State Department and American Minister at Athens, reflecting efforts of Greek Government to verify fact of petitioner's Greek citizenship.

May 25, 1937: Greek Foreign Office advises American Minister at Athens that efforts to trace petitioner's brother in the village of Cassandra have been in vain, and requests "more precise information regarding the proposed deportee."

June 29, 1937: Above advice and request forwarded to Labor Department by Secretary of State.

August 12, 1937: Petitioner interviewed for supplementary statement regarding his birthplace and citizenship.

August 23, 1937: Supplementary statement sent to State Department.

September 1937-January 1939: Correspondence between State and Labor Departments, and State Department and American diplomatic representatives in Greece and Turkey, reflecting further ef-

POOR COPY

BLEED THROUGH

forts by Greek and Turkish authorities to trace petitioner and verify his citizenship status.

March 8, 1939: Turkish Ministry of Foreign Affairs reports that one "Alexandrus Ballakis," a native of Turkey who departed from that country in 1912, "acquires the status of exchangeable according to Article 1 of the Convention on the exchange of Greek and Turkish populations, and loses his Turkish nationality by birth in accordance with Article 7 of the above Convention." [12]

April 17, 1939: Secretary of State advised by American Minister at Athens that the Greek Legation at Washington has been instructed to issue a passport to petitioner.

August 2 and 7, 1939: Greek Legation at Washington instructs Greek Consul in New Orleans to issue a passport to petitioner.

August 26, 1939: Greek Consul in New Orleans advises New Orleans District Director that, inasmuch as petitioner "was born in a part of Greece which was then part of Turkey" and had "never taken an oath of Greek citizenship," petitioner should be presented at the Consulate for administration of such oath, following which he, the Consul, would "communicate with the Greek Legation regarding the issuance of a passport."

September 1, 1939: Another request to reopen deportation proceeding filed.

November 16, 1939: Request denied.

November 24, 1939: Authority granted to convey petitioner to Greek Consulate in New Orleans for taking oath.

---

[12] The terms of this Convention appear at 18 Am. J. Int. L., Supp., pp. 84-90. See note 11, *supra*, p. 17.

November 29, 1939: First habeas corpus petition filed.

December 5, 1939: Writ dismissed.

December 9, 1939: Request made that deportation be deferred for six months to give petitioner an opportunity to close his business affairs.

December 21, 1939: Six-month deferment granted.

June 18, 1940: Instructions issued to convey petitioner to New Orleans at termination of deferment period, after ascertaining that a person competent to issue passports is available at Greek Consulate in that city (there having been a report that the Consul was in Greece).

September 12, 1940: Case permitted to rest for time being due to impossibility of effecting deportation on account of closing of Mediterranean.

October 16, 1940: Instruction to convey petitioner to New Orleans for taking of oath reissued, in view of fact that deportation to Greece "now is possible, at least via New York."

October 21-23, 1940: Petitioner goes to New Orleans at his own expense: in view of fact that "some questions" arise as to his "exchangeability" and his "refusal to sign the necessary petition," Consulate declines to issue passport and refers matter to Greek Legation in Washington for further instructions.

October 1940-June 1945: Further efforts to effect deportation interrupted, due, apparently, to difficulties encountered in obtaining passport and to impossibility of carrying out deportation in consequence of World War II; two additional requests to reopen deportation proceeding denied during

POOR COPY

BLEED THROUGH

this period, on January 11, 1943, and August 7, 1943.

June 8, 1945: Instructions issued that petitioner be called on to surrender for deportation.

June 14, 1945: Greek Consulate in New Orleans, asked if it is prepared to issue passport to petitioner, replies that it is not now authorized to issue passports to Greek subjects and that applications should be made to Greek authorities in Washington.

July 24, 1945: Stay of deportation requested to permit filing of new motion to reopen deportation proceeding.

August 17, 1945 (*circa*): 90-day stay of deportation granted.

January 25, 1946: At request of newly-retained attorney, further stay of 15 days granted.

February 12, 1946: Motion to reopen deportation proceeding filed.

March 29, 1946: Motion to reopen denied.

May 20, 1946: Petitioner taken into custody for deportation; second (instant) habeas corpus petition filed.

May 21, 1946: Petition for writ dismissed; intention to appeal announced orally in open court; notice of appeal not filed until August 19, 1946.

July 19, 1946: Greek Consul in New York advises that since petitioner was born in Turkey and has no documentary evidence of Greek citizenship, he is not considered a Greek citizen and cannot be given a passport.

July 26, 1946: Commissioner of Immigration and Naturalization advises Secretary of State that, despite Greek Government's instruction to Greek Legation in Washington to issue a passport

to petitioner (see under April 17, 1939, *supra*, p. 19), "all efforts of this Service to secure a passport have failed," and requests that "the matter be presented to the Greek Legation with a request for the issuance of a passport" for the purpose of effecting petitioner's deportation.

November 25, 1946: American Ambassador at Athens informs Secretary of State that "The Greek Ministry for Foreign Affairs has informed this office that the subject is entitled to a Greek passport and that appropriate instructions are being sent to the Greek Embassy, Washington, to issue the passport."

December 17, 1946: Secretary of State transmits foregoing advice to the Immigration and Naturalization Service.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1948 708704 14

POOR COPY

BLEED THROUGH